86-618

No. ___

Supreme Court, U.S.
FILED
OCT 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ROGER A. HILST,

Appellant,

v.

GERALD GRIMES
Insurance Commissioner, State of Oklahoma,

Appellee.

On Appeal from the Supreme Court of Oklahoma

JURISDICTIONAL STATEMENT

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64 pp

QUESTIONS PRESENTED

1. Whether the court below improperly denied certiorari and thus upheld an interpretation of the Oklahoma administrative procedure statutes which would deny to Hilst, a licensed and fully qualified life insurance agent, the fundamental right to earn a living without receiving fair and adequate notice prior to the hearing of the specific charge to be used against him?

Whether the court below improperly denied certiorari and thus upheld an interpretation of the Oklahoma administrative procedure statutes which would deny to Hilst a hearing prior to the temporary revocation of his license despite the fact that there was no threat to public safety and no exigent circumstances?

2. Whether the court below improperly denied certiorari and thus upheld an interpretation of the Oklahoma administrative procedure statutes which would deny Hilst, the accused in an adjudicatory revocation proceeding, the right to cross-examine witnesses but allow the Insurance Commissioner's representative to cross examine Hilst?

3. Whether the court below improperly denied certiorari and thus upheld an interpretation of Oklahoma procedure statutes which would unconstitutionally deny discovery that would show lack of jurisdiction of subject matter and show that there was no misappropriation of funds or other fault?

4. Whether the court below improperly denied certiorari and thus upheld an interpretation of Oklahoma procedure statutes which would unconstitutionally deny Hilst the right to know and understand how

to protect himself by the failure of the Insurance Commissioner to furnish to Hilst a copy of the Administrative Procedure Act that would explain the procedures and further the failure to furnish Hilst the specific section of the insurance code under which he was charged?

5. Whether the court below improperly denied certiorari and thus upheld an interpretation of the Oklahoma procedure statutes which would unconstitutionally allow the Insurance Commissioner to enter evidence on any charge he chose and then later amend his notice to conform with the evidence if he was able to introduce evidence or secure an admission to support his new charge?

6. Whether the court below improperly denied certiorari and thus upheld the interpretation of the Oklahoma procedure statutes which would unconstitutionally deny the right to discovery to show that due process was violated?

7. Whether the court below improperly denied certiorari and thus upheld the interpretation of the Oklahoma procedure statutes which would unconstitutionally deny a person the right to counsel in an adjudicatory administrative proceeding?

8. Whether the Oklahoma administrative procedure statutes, as interpreted, are unconstitutional since they deny to an applicant the opportunity to adequately raise constitutional issues before a Court?

9. Does the District Court of Tulsa County, hearing an appeal from an administrative tribunal under the Oklahoma procedures act have the authority and obligation to inquire into "due process" of the proceeding before the administrative body or is the

District Court and later appellate courts limited on appeal in their inquiry and forced or bound to uphold the agency if there is "any evidence to support" the agency's decision?

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CONSTITUTIONAL PROVISIONS:

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JURISDICTIONAL STATEMENT

Pursuant to Supreme Court Rule 15 Appellant, Roger Hilst, files this Jurisdictional Statement setting forth the basis upon which the United States Supreme Court has jurisdiction to review on appeal an Order entered by the Oklahoma Supreme Court approving the Oklahoma Insurance Commissioner's revocation of Hilt's life insurance license and showing why justice and the Constitution of the United States cry out for the United States Supreme Court to exercise such jurisdiction in this instance.

OPINIONS BELOW

The Order of the Supreme Court of the State of Oklahoma refusing to review the decision of the Oklahoma Court of Appeals is included herein as page one of Appendix 1.

The opinion of the Oklahoma Court of Appeals is included herein as Appendix 2, pages 2a through 5a.

The opinion of the trial court appears in Appendix 2, pages 6a through 9a.

The Order of the Insurance Commissioner of the State of Oklahoma appears in Appendix 2, pages 10a through 13a.

GROUNDS OF JURISDICTION OF SUPREME COURT

This appeal arises from the temporary and later permanent revocation of the life insurance license of Roger Hilst by the Oklahoma Insurance Commissioner's office using procedures and interpretations of

Oklahoma Statutes that violate Hilst's fundamental constitutional rights.

The District Court of Tulsa County Oklahoma, the Oklahoma Court of Appeals and the Oklahoma Supreme Court have acknowledged and confirmed interpretations of law that violate the Fourth and Fourteenth Amendments to the United States Constitution in that the approved interpretation permits the following injustices:

1. Hilst's license and livelihood was temporarily suspended without any hearing *when no public danger was present.*

2. Hilst was tried without receiving notice *before the hearing* of the *specific charges* made against him and without receiving notice *before hearing* of the *specific sections* of statutes under which he was accused.

3. The Insurance Commissioner was allowed to cross-examine Hilst, but Hilst was denied the right to cross-examination of his accusers.

4. The Commissioner was allowed to introduce evidence on any subject and move to amend his Notice after trial to conform to the proof, without prior notice to Hilst of the evidence.

5. Hilst was denied discovery of evidence of documents and other evidence that would prove lack of jurisdiction of subject matter of the hearing examiner and that there was no misappropriation of funds.

6. Hilst was denied the right to counsel.

7. Hilst was not *furnished a copy* of the specific law or specific regulation in advance of hearing nor was he given a copy of the pertinent provisions and procedures of the Administrative Procedures Act.

8. The hearing examiner did not advise Hilst of his rights at each stage of the proceeding and contends he has no obligation to do so.

9. Hilst was not furnished a trial transcript within time ordered by law to perfect his initial appeal.

10. The appeal courts refused to examine due process if there was "any evidence" against Hilst to support the agencies decision.

11. Hilst denied discovery to show how lack of Notice prejudiced him in the administrative hearing.

The Order the Supreme Court of Oklahoma denying certiorari was entered on July 15, 1986. A timely Notice of Appeal to United States Supreme Court was filed on September 8, 1986, in the Supreme Court of Oklahoma, and was refiled on September 19, 1986, in the Supreme Court of Oklahoma. Jurisdiction of this court is invoked under the provisions of Title 28 USC §1257 (2). Cases that sustain the jurisdiction of this court include: *Fiske v. Kansas*, 274 US 380 (1927); *New York ex rel Bryant v. Zimmerman*, 278 US 63 (1928); *Atchison, T.And S. F. R Co. v. Public Utilities Com.*, 346 US 346 (1953); *Jenkins v. Georgia*, 418 US 153 (1974); *New Orleans Land Co. v. Brott*, 263 US 97 (1923); *Standard Oil Co. v. Johnson*, 316 U.S. 481

(1942); *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282 (1921); *Marcus v. Search Warrant of Property*, 367 U.S. 717 (1961); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963); *Shaffer v. Heitner*, 433 U.S. 186 (1977); *Abie State Bank v. Bryan*, 282 U.S. 765 (1931); *Williams v. Bruffy*, 102 U.S. 248 (1980); *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62 (1948); *La Crosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U.S. 18 (1949); *Armstrong v. Manzo*, 480 U.S. 545, 552; *Baldwin v. Hale*, 58 U.S. 223; *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Dayton-Goose Creek R. Co. v. United States*, 263 U.S. 456, 486; *Elliot, et al. v. Peirsol, et al.*, 1 Peters, 340; *Estep v. United States*, 327 U.S. 114 (1945); *Falbo v. United States*, 320 U.S. 549; *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); *Gonzales v. U.S.*, 348 U.S. 407, 415 (1954); *Grannis v. Ordean*, 234 U.S. 385; *Hovey v. Elliott*, 167 U.S. 409; *Jenkins v. Georgia*, 418 U.S. 153 (1974); *Lessee of Hickey, et al. v. Stewart, et al.*, 3 Howard, 762; *Lessee of Walden v. Craig's Heirs, et al.*, 14 Peters, 154; *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552; *McVeigh v. United States*, 11 Wall. 259, 267; *Morgan v. United States*, 304 U.S. 1, 18; *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9 (1977); *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950); *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U.s. 287, 289; *Panama Refining Co. v. Ryan*, 293 U.S. 388, 432; *Perry v. Sindermann*, 408 U.S. 593, 602 (1972); *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210; *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 52; *Windsor v. McVeigh*, 93 U.S. 274; *Wolf v. McDonnell*, 418 U.S. 539, 557 (1974).

The validity of Okla. Stat. tit. 75 §309 (1981); Okla. Stat. tit. 75 §310 (1981), Okla. Stat. tit. 75 §314, and Okla. Stat. tit. 75 §318 (Supp. 1985) *as intrepreted by the Oklahoma Insurance Commission* and *approved* by the *Oklahoma Courts* are at issue, and the full texts thereof are set out verbatim in Appendix 3 to this Jurisdictional Statement.

STATEMENT OF THE CASE

The facts of the case underlying this appeal are as follows:

The office of the Insurance Commissioner of the State of Oklahoma, received a complaint from an insurance company which two years before had been an employer of Roger Hilst. Since leaving that company on good terms Hilst had been very successfully employed by several other companies that were very competitive with the complaining company. With virtually no investigation the Commissioner temporarily revoked Hilst's license and gave Hilst a notice of a proposed permanent revocation action and hearing. (Appendix 7, pages 39a through 42a) The Administrative Procedure Act of Oklahoma, Okla. Stat. tit. 75 §309, 310 (1981) governs the procedure for the issuance of such a notice. The Administrative Procedure Act makes the following requirements and gives the following rights to an accused in a license revocation hearing:

1. The right to have a *specific* statement of how the accused violated the act given to him *in advance* of the hearing.

2. The right to confront and cross-examine witnesses.

3. The right to counsel.

4. The right to appellate review that inquires into jurisdiction of the tribunal.

The requirements of the Fourth Amendment to the Constitution require not only the above but also:

1. That a copy of the regulation or law be given in advance to the accused.

2. The judge, hearing examiner or presiding party is obligated, as is the Commissioner, to advise, at each stage of the proceedings, the defendant of his rights.

3. The judge, hearing examiner or tribunal is obligated to stop the procedure and summon additional evidence when it appears that the defendant who appears pro se, did not know how or could not secure the necessary evidence to lay all of the facts before the tribunal before a decision is made.

4. An individual faced with the deprivation of his means to earn a living must be granted an opportunity to adequately present and argue constitutional issues before a competent tribunal.

Oklahoma law allows revocation of an existing license on a temporary basis without hearing only when the public safety is jeopardized. The Insurance Commissioner in the original notice alleged that Hilst misappropriated policyholders' money in order to have grounds for revocation instantly without hearing.

Hilst knew that he had done none of the acts charged in the original notice and so without fear and counsel he appeared before the Insurance Commissioner's examiner to explain he had not misappro-

priated any policy holders money or forged any names on any insurance policies.

At the opening of the hearing the Insurance Commissioner's representative advised the hearing examiner that a "typographical error" had been made and that public funds, that is of the money of policyholders of an insurance company, were not involved. He moved to amend his notice to conform with the proof he was to then enter.

At the beginning of the hearing the Insurance Commissioners hearing examiner allowed the attorney's for the Commissioner to introduce any kind of evidence on any subject matter that they chose and then amended their notice/complaint at the conclusion of the evidence to conform with whatever kind of improper conduct they could prove.

The Commissioner's office never intended to allow any cross-examination of witnesses because they had no live witnesses present to testify. They knew in advance the exact evidence that they had received because it was contained in affidavits that they knew could not be cross-examined.

None of the affidavits said that the affiant/accusor was owed or had any right to receive the funds in the checks. None of the affidavits said Hilst forged a name on any application for insurance.

Hilst had no documentary evidence with him to demonstrate the chain of command and procedures of his former employer because he no longer had his copies of this documents because his office had been illegally entered by a former employer and all documents stolen. (Please refer to Appendix 6, pages 31a-34a) Hilst explained this to the hearing examiner

but no explanation of subpoena powers or where or how to force delivery of the documents was given by the hearing examiner or commissioner.

These documents, if Hilst could have obtained them, would show that all the funds allegedly misappropriated, were returned to the employer as the agents to whom the checks were originally made out did not have the advances accrued because the policy in question had been cancelled and no advance funds were due.

Knowing Hilst no longer had the documents to clear himself the Commissioner and hearing examiner took the position that they had no obligation to aid Hilst or to inform him of his rights to a continuance or how to subpoena his salvation but instead found him guilty.

The preliminary Order cancelling Hilst's license was made permanent by the hearing examiner and appeal taken pursuant to Okla. Stat. tit. 75 §318 (Supp. 1985) to the District Court of Tulsa County, Oklahoma.

Hilst did not know any lawyer nor had he ever been represented by a lawyer before. He now obtained a lawyer.

In the District Court of Tulsa County, the constitutionality of the proceedings before the hearing examiner was raised, see the Petition for Review. (Appendix 5, pages 21a through 25a.). Having been properly presented to the trial court, the constitutional issues were not properly considered by the court. Hilst was denied an opportunity for discovery and the trial court limited its review to the record of the commission proceeding. (Appendix 5 pages 29a through 30a). Therefore, Hilst never had an oppor-

tunity to adequately present the constitutional issues to a competent tribunal.

While represented by counsel in the State District Court, Hilst raised Okla. Stat. tit. 75 §320 (1981), which indicates that the Insurance Commissioner must furnish a transcript to the defendant within 30 days. This was not done. The commissioner orally refused to grant an extension of time to file the appeal to the District Court until counsel had an opportunity to read and digest the tardy transcript. An Amendment to the Petition and amendment (Appendix 5, page 21a) in paragraph V, subparagraph 1 alleges that the Insurance Commissioner did not follow the Administrative Procedure Act of Oklahoma and violated the Fifth and Fourteenth Amendments to the Constitution of the United States in that:

1. A clear concise statement of the charges and statement of legal authority supporting those charges filed against Mr. Hilst were not given to him in sufficient time to allow him to prepare a defense.

2. That the notice given him was on different charges than the charges on which he was tried and on which he was prepared to defend.

3. That the Insurance Commissioner does not have the specific authority to look at the inner workings of an insurance company when these workings do not involve the public.

4. Hilst was not advised of his right to a continuance at the beginning of the admistrative proceeding when the nature and extent of the charges were changed.

5. That the hearing examiner allowed the Insurance Commissioner to "try" Mr. Hilst, without being con-

fronted by witnesses; without an opportunity to cross examine witnesses and allowed him to answer questions about various subjects without advising Hilst of his rights.

In the District Court Hilst also attempted to discover the jurisdictional basis for the Commissioner's office inquiring into the internal dealing of agents where the public is not involved. Discovery was commenced and Interrogatories and Request for Admissions were filed and were served on the Commissioner. (Appendix 5, pages 26a through 28a) A deposition was commenced by Jerry Johnson an employee of the insurance carrier who filed the complaint against Hilst. His testimony was that without authorization, he obtained a key and entered Hilst's office and took all Hilst's records. (Appendix 6, pages 31a through 38a) The Insurance Commissioner and Johnson sought refuge behind a Protective Order at this point and further clarification could not be had. The refusal of the District Court to allow inquiry into these areas was raised on appeal.

These flagrant constitutional violations were clearly raised and briefed at the trial court level (please refer to Plaintiff's Amended Petition, Appendix 5 pages 21a through 25a herein) and again in the Appellate Court and Supreme Court of the State of Oklahoma. However, each Oklahoma Court considering these constitutional issues summarily dismissed them. (Appendix I and Appendix II, pages 2a through 5a).

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents important and substantial questions, as hereinafter described, in that the Supreme Court of the State of Oklahoma denied

certiorari to Roger A. Hilst, the appellant herein, and thus necessarily and impliedly upheld the validity of the State's statutory interpretation which would allow a person to be deprived of his fundamental right to earn a living, without the opportunity of adequate notice of the proceedings pending against him, without the right to cross examine live witnesses, without the right to have counsel, and without any opportunity for judicial review in which meaningful discovery would be allowed to show the due process violations inherent in the administrative procedure statute. The Oklahoma Supreme Court, by enforcing this interpretation of Oklahoma statutes, fails to acknowledge the binding force and effect of controlling federal law, and thus allows the Oklahoma Statutes, as interpreted, to stand, despite their obvious contrivention of United States Constitution.

The Supreme Court has jurisdiction to review this claim on the contention that a state statute, as construed and applied, is repugnant to the Constitution. *Standard Oil Co. v. Johnson*, 316 U.S. 481 (1942); *Dahnke-Walker Miller Co. v. Bonduant*, 257 U.S. 282 (1921). It is not important that a statute may be invalid as applied to one set of facts, and yet valid as applied to another set of facts in order to support jurisdiction under 28 U.S.C. §1257; a litigant only has standing to complain of a statute's validity when the operation of that statute will result in some harm or disadvantage to him. *Dahnke-Walker*, supra. Even though a statute might have been ruled constitutional as applied to certain circumstances, later events may render the statute invalid as applied in new situations thereby permitting a subsequent review by the Supreme Court. *Abie State Bank v. Bryan*, 282 U.S.

765 (1931). In this case, the Oklahoma State officials have construed and applied the challenged statutes in an unconstitutional manner.

CONCLUSION

It is with heavy heart and disbelief that Roger Hilst and I request relief from the interpretation of the law of our State and from the courts of our State in which we both believe and in which I have served for 24 years without ever before seeing a breakdown of that backbone of justice termed "due process". For the reasons above stated Hilst submits that this appeal brings before the court substantial and important federal questions which require unbounded consideration, with briefs on the merits and oral argument, for their resolution. We are at a loss to explain the refusal of the District Court of Tulsa, the Oklahoma Court of Appeals, and the Oklahoma Supreme Courts refusal to read, to understand, to listen and realize, absorb, simulate, recognize, fathom and understand the issues of fundamental due process raised. In 1963 the Administrative Procedure Act of Oklahoma became law. Before that time hearings by the Insurance Commissioners hearing examiners were given new trials in the District Court on a "de novo" basis. The procedures followed by the hearing examiner in this case did not breach due process under the old law because the rules of evidence, cross-examination, and the right to a jury trial were first given at that level. With the advent of the Administrative Procedures Act in Oklahoma in 1963 the right to a jury was taken away and the right to a full trial before a District Court was aborgated. In its place to protect the rights of the citizen the stringent provisions of the Adminis-

trative Procedures Act were introduced to safeguard the accused's rights. The Insurance Commissioner does not like the stringent new requirements that have been placed on his office and his attorney's and hearing examiner are still carrying the tradition of former law and procedure.

An appellate court can not abandon its obligation to examine "due process" and limit discovery that would show denial of due process or jurisdiction of the subject matter. In Appendix 6 at pages 31a to 34a is the partial deposition of Jerry Johnson that shows that the records needed to explain the alleged "misappropriation" of funds were stolen from Hilst's office by agents of his accusers. The District Court of Tulsa County refused to allow the deposition to continue so that the true facts would be known and then finds no reason that the procedure used could possibly prejudice Hilst.

The Supreme Court of Oklahoma has now confirmed an interpretation of this Administrative Procedures Act that prohibits any inquiry into "due process" at the administrative hearing level where it is most likely to occur. On appeal this interpretation of the Administrative Procedures Act prevents inquiry into the subject matter jurisdiction of the hearing, the adequacy of the Notice, whether the hearing was planned in advance so the right of cross examination would be denied, and whether or not there was compliance with the agency's obligation to adequately inform the accused at all stages of the procedure of his rights.

In the District Court interrogatories were sent to the Insurance Commission to show that his office did not have subject matter jurisdiction of an internal

dispute between agents where the public was not involved. The interpretation of the Administrative Procedure Act approved by the Appellate Courts of Oklahoma prevents this inquiry.

Why can't Roger Hilst demand and receive the protection of law that is given to felons and all manner of evil doers?

How is the dignity of the Insurance Commissioner's Office harmed by ordering it to follow the law in every detail?

In the crucible of the law due process takes the place of "life" in a living organism. It is a fragile thing. If it is once destroyed it is gone forever.

Dated this 13th day of October, 1986.

Respectfully submitted,

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APPENDIX

APPENDIX 1

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, July 15, 1986

FILED JUL 15 1986

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

63,358 Roger A. Hilst v. Gerald Grimes, Insurance Commissioner, State of Oklahoma.
Certiorari denied

/s/ ROBERT D. SIMMS
CHIEF JUSTICE

APPENDIX 2

THE COURT OF APPEALS, OKLAHOMA CITY DIVISIONS, STATE OF OKLAHOMA

Case Number 63,358

ROGER A. HILST,

Appellant,

versus

GERALD GRIMES, Insurance Commissioner of the State of Oklahoma,

Appellee.

FILED MAR 21 1986

ORDER

This Accelerated Docket case was orally presented and submitted to the undersigned judges.

Appellant's insurance agent's license in the State of Oklahoma was revoked by order of the hearing examiner following a hearing held pursuant to a notice and order issued by Appellee. The notice alleged that Appellant misappropriated money from three individuals and forged the signature of two other individuals on insurance applications, constituting violations of Title 36 O.S. 1981, §1428(A)(1)(c)(e)(i) and (j). Appellant appeared at the hearing and conducted his own defense without counsel. The testimony before the hearing examiner consisted of testimony by way of affidavits from Appellee, and testimony from Appellant. Appellee moved that the notice be amended to conform with the evidence to use the word "agent" in lieu of the word "policy holder", which was

granted by the hearing examiner at the close of all the evidence. Appellant admitted the charges of misappropriation of funds but denied signing the names of the applicants to insurance policies without their knowledge or consent. Appellant was allowed ten days to supplement the record but failed to do so. The hearing examiner entered his order reciting findings of fact and conclusions of law and revoked Appellant's license.

Appellant filed his petition for judicial review in the District Court of Tulsa County. Briefs were submitted and oral argument was scheduled. However, neither Appellant nor Appellant's counsel appeared at the oral judgment. The District Court affirmed Appellee's order revoking the insurance agent's license of Appellant and denied Appellant's motion for new trial. The District Court's order is appealed as error.

Appellant contends Appellee did not follow due process of law requirements nor the Administrative Procedures Act of the State of Oklahoma in revoking his license. Appellant objects to the amendment of the notice to conform with the evidence at the close of the hearing, and that he was not advised by the hearing examiner, of his right to be represented by counsel. The notice was amended at the close of the evidence to reflect the word "agent" instead of "policy holder". The record does not reflect bias or prejudice to the Appellant by such an amendment. The Appellant was present at the hearing, testified on his own behalf to the charges, and was well aware of the facts surrounding the charges in the original notice. The rule that the pleading and proof must conform is relaxed in administrative proceedings. *State v. Guardian Funeral Home*, 429 P.2d 732 (Okl. 1967). In an administrative proceeding, the scope of the hearing should not be arbitrarily limited, but the issues are ordinarily limited to those raised by the pleadings. *Board of Examiners of Veterinarian Medicine v. Mohr*, 485 P.2d 235 (Okl. 1971). Appellant cites no authority prohibiting the trial examiner to amend the

notice to conform with the evidence. Appellant cites no authority requiring that he be represented by counsel at the hearing. Because Appellant was not represented by counsel, he seeks to impose an additional burden upon the hearing examiner to advise him of his rights during the course of the hearing. The Administrative Procedures Act does not require this. Title 75 O.S. 1981, §310(5) states in part:

> "Any party shall at all times have the right to counsel, . . .".

Appellant chose to proceed without counsel before the hearing examiner. The record reflects procedural compliance with Title 75 O.S. 1981, §310.

Appellant's second contention is without merit. Appellant alleges error again based on the wording of the notice, but cites no authority in support of his position.

Appellant contends the testimony was insufficient to establish the findings of fact reached by the hearing examiner. Both the hearing examiner and the District Court found grounds for revocation of Appellant's insurance agent's license did exist as a result of Appellant's misappropriating and converting to his own use, monies belonging to insurance agents under his supervision and Appellant's forgery of the name of another person to an application for insurance. The record reflects these findings to be supported by substantial evidence and as such, must be affirmed by this court on appeal. *Tulsa Area Hospital Council v. Oral Roberts*, 626 P.2d 316 (Okl. 1981).

Appellant contends the District Court improperly denied discovery in its review of the hearing examiner's order. The procedure for judicial review is set forth in Title 75 O.S. 1981 §§318 and 321. The District Court conducted a review on the record only, and denied discovery by Appellant. Appellant is not entitled to a trial de novo from the order of Appellee, and the scope of the review before

the District Court is of the record only. *Rousel v. State ex rel. Grimes*, 614 P.2d 53 (Okl. 1980). Appellant cites no authority to the contrary.

Appellant cites no authority in support of his last proposition of error and as such, the proposition will be deemed waived by this court. *Peters v. Golden Oil Company*, 600 P.2d 330 (Okl. 1979).

The record reflects proper procedure was followed in Appellant's hearing before Appellee; the judicial review by the District Court was properly confined to the record and the findings of fact and conclusions of law are supported by substantial evidence.

IT IS THEREFORE ORDERED that the trial court's order appealed from is AFFIRMED.

DONE BY ORDER OF THE COURT OF APPEALS IN CONFERENCE this 21st day of March, 1986.

/s/ DONALD L. HOWARD
Judge

/s/ Illegible
Judge

/s/ Illegible
Presiding Judge

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

Case No. CJ-84-569

ROGER A. HILST,

Plaintiff,

vs.

GERALD GRIMES, Insurance Commissioner,
State of Oklahoma,

Defendant.

FILED OCT 5 1984

JOURNAL ENTRY

This matter having come before the Court upon the Petition for Judicial Review of the January 4, 1984, Order of the Oklahoma Insurance Commission revoking the insurance agents license of Roger A. Hilst; the Plaintiff, represented by his counsel, Paul McBride of the law firm McBride & Miller; the Insurance Commissioner, represented by his assistant general counsel, Bert E. Marshall; and the Court having heard the arguments of counsel, having read their respective briefs and having reviewed the record of the November 9, 1983, hearing conducted by the Oklahoma Insurance Commission's Hearing Examiner, said hearing having resulted in the Order which Plaintiff now appeals, finds as follows:

1. The Insurance Commissioner's Notice and Order to Show Cause listed the names of the three individuals from whom Plaintiff allegedly misappropriated specific sums of monies, said Notice and Order to Show Cause referring to these individuals as policyholders when the Insurance

Commission presented evidence that they were in fact agents.

2. The error in nomenclature found in the Insurance Commissioner's Notice and Order to Show Cause was not material and did not prejudice the Plaintiff at the administrative hearing.

3. The Hearing Examiner properly allowed the Insurance Commissioner's motion to conform the allegations contained within the Notice and Order to Show Cause with evidence presented.

4. The Oklahoma Administrative Procedures Act, 75 O.S. 1981, §301-326 does not require the Insurance Commission nor its Hearing Examiner in a license revocation hearing to apprise the plaintiff of his right to counsel, said mandate being confined to criminal prosecutions and not applicable to the administrative hearing wherein plaintiff's insurance agents license was revoked.

5. The Oklahoma Insurance Commission had jurisdiction over plaintiff pursuant to 36 O.S. 1981, §1428(A)(1)(e) and (j).

6. The Hearing Examiner did not err in finding that grounds exist for the revocation of plaintiff's insurance agents license as a result of plaintiff's improper withholding, misappropriating and converting to his own use monies belonging to insurance agents under his supervision received in the course of his insurance business.

7. The Hearing Examiner did not err in finding that grounds exist for the revocation of plaintiff's insurance agents license as a result of plaintiff's having forged the name of another person to an application for insurance.

8. The suspension instanter of plaintiff's insurance agents license in the Insurance Commissioner's Notice and Order to Show Cause is not relevant to the judicial review of the Insurance Commissioner's Order of January 4, 1984, revoking the insurance agents license of plaintiff.

9. The January 4, 1984, Order of the Insurance Commissioner revoking the insurance agents license of plaintiff which included a finding of facts and conclusions of law separately stated, was issued in compliance with 75 O.S. 1981, §312.

10. Judicial review of the Order of the Insurance Commissioner revoking the insurance agents license of plaintiff is limited to a review of the record and a trial de novo is not proper relief.

WHEREFORE, the Court finds that the hearing before the Oklahoma Insurance Commission's Hearing Examiner on November 9, 1983, was conducted according to proper procedure as set forth in the Oklahoma Administrative Procedures Code 75 O.S. 1981, §301-326, that the Insurance Commission was correct in its determination that grounds exist for the revocation of the §301-326, that the Insurance Commission was correct in its determination that grounds exist for the revocation of the insurance agents license of Roger A. Hilst, and that no prejudicial error was committed by the Hearing Examiner.

WHEREFORE, pursuant to the standards for review by this Court as set forth in the Oklahoma Administrative Procedures Act, 75 O.S. 1981, §322, having determined that the Order is valid and the proceedings were free from prejudicial error to the plaintiff, the Court further finds the Order must be affirmed as required by 75 O.S. 1981, §322(3).

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the January 4, 1984, Order of the Insurance Commission revoking the insurance agents license of Roger A. Hilst is hereby affirmed.

/s/ TONY W. GRAHAM
HONORABLE TONY GRAHAM
District Court Judge

Signed 10/4/84

Approved as to Form:

McBride & Miller
210 South 5th Street
Jenks, Oklahoma 74037
Telephone (918) 299-6363

/s/ n/a
By Paul McBride
Attorney for the Plaintiff
Bert E. Marshall
Assistant General Counsel
Oklahoma Insurance Commission
423 Will Rogers Memorial Office Building
Oklahoma City, Oklahoma 73105
Telephone (405) 521-2746

/s/ Bert E. Marshall
By Bert E. Marshall
Attorney for the Defendant

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF OKLAHOMA

Case No. 83-158

THE STATE OF OKLAHOMA, ex rel GERALD GRIMES, Insurance Commissioner,

Petitioner,

vs.

ROGER A. HILST, a licensed resident insurance agent in the State of Oklahoma,

Respondent.

ORDER

A Hearing was held pursuant to the above captioned case on the 9th day of November, 1983. The State of Oklahoma, ex rel Gerald Grimes, Insurance Commissioner, was represented by and through its attorney, Bert E. Marshall. The Respondent, Roger A. Hilst appeared and proceeded pro se. At the conclusion of the Hearing, Respondent made a motion for additional time to introduce further evidence to the Hearing Examiner. The motion was sustained and the Hearing Examiner ordered the record to remain open for ten (10) additional days until the 19th day of November, 1983, during which time the Hearing Examiner would consider further evidence offered by the Respondent. No such evidence was offered within such time nor has any evidence been offered subsequent to such time. Therefore, the Hearing Examiner having examined the evidence and being fully apprised in the facts finds as follows:

JURISDICTION

1. That Gerald Grimes is the Insurance Commissioner of the State of Oklahoma and as such is charged with the

duty of administering and enforcing all provisions of the Oklahoma Insurance Code, 36 O.S. 1981, §§101-306.

2. That the Insurance Commissioner, pursuant to 36 O.S. 1981, §307(A) has appointed Everett E. Sloop for the purposes of acting as Hearing Examiner with all the implied and expressed powers delegated therefore.

3. That Respondent, Roger A. Hilst, is a licensed resident insurance agent in the State of Oklahoma holding license number 013668.

FINDINGS OF FACTS

1. That on or about March 21, 1982, Respondent misappropriated monies in the amount of Three Hundred Seven Dollars and Ninety Nine Cents ($307.99) received from Massachusetts Indemnity and Life Insurance Company (hereinafter referred to as MILICO). Said monies were to be paid to Stephen Hickman, a MILICO agent.

2. That on or about March 16, 1982, Respondent misappropriated monies in the amount of Three Hundred Four Dollars and Eighty Three Cents ($304.83) received from MILICO. Said monies were to be paid to James E. Foy, a MILICO agent.

3. That on or about March 21, 1982, Respondent misappropriated monies in the amount of Nine Hundred Eighty Seven Dollars and Forty One Cents ($987.41) received from MILICO. Said monies were to be paid to James E. Foy, a MILICO agent.

4. That on or about April 4, 1982, Respondent misappropriated monies in the amount of Two Hundred Twenty Five Dollars and Ninety One Cents ($225.91) received from MILICO. Said monies were to be paid to Brad Causey, a MILICO agent.

5. That on or about April 7, 1982, Respondent forged the signature of Mark Weber to an application of insurance to be placed with MILICO.

6. That on or about April 20, 1982, Respondent forged the signature of Donald James Murphy to an application of insurance to be placed with MILICO.

CONCLUSIONS OF LAW

That Respondent's actions as shown constitute violations of 36 O.S. (1983 Supp.), §1428(A)(1)(c),(e),(i), and (j).

ORDER

IT IS THEREFORE ORDERED that all licenses as an insurance agent in the State of Oklahoma of Respondent, Roger A. Hilst, be and are hereby revoked.

WITNESS My Hand and Official Seal this 4th Day of January, 1984.

GERALD GRIMES
INSURANCE COMMISSIONER
STATE OF OKLAHOMA

By /s/ EVERETT E. SLOOP
EVERETT E. SLOOP
Hearing Examiner

CERTIFICATE OF MAILING

I, Bert E. Marshall, hereby certify that a true and correct copy of the foregoing Order was mailed first class mail to Roger A. Hilst, 2522 South Florence, Tulsa, Oklahoma, 74135, and to all appointing insurers of record:

Alexander Hamilton Life Insurance Company
Anchor National Life Insurance Company
National Benefit Life Insurance Company
Continental Life and Accident Company
Empire Life Insurance Company
Frontier Insurance Company
Great American Life Insurance Company
First Continental Life and Accident Insurance Company
ITT Life Insurance Corporation
E. F. Hutton Life Insurance Company
Lincoln Liberty Life Insurance Company
Massachusetts Indemnity and Life Insurance Company
Midland National Life Insurance Company
Sovereign Life Insurance Company of California
Time Insurance Company
United Fidelity Life Insurance Company
Victory Life Insurance Company

BY /s/ BERT E. MARSHALL
BERT E. MARSHALL
Assistant General Counsel

APPENDIX 3

Title 75 O.S. §309 Individual proceedings—Notice—Hearing

(a) In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include:

(1) a statement of the time, place, and nature of the hearing;
(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
(3) a reference to the particular sections of the statutes and rules involved;
(4) a short and plaint statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved . . .

(d) Unless precluded by law, informal disposition may be made of any individual proceedign by stipulation, agreed settlement, consent order, or default.

(e) The record in an individual proceeding shall include:

(1) all pleadings, motions and intermediate rulings;
(2) evidence received or considered;
(3) a statement of matters officially noticed;
(4) questions and offers of proof, objections, and rulings thereon;
(5) proposed findings and exceptions;
(6) any decision, opinion, or report by the officer presiding at the hearing;

(7) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case . . .

(g) Findings of fact shall be exclusively on the evidence and on matters officially noticed."

Title 75 O.S. §310. Procedures before agency in individual proceedings:

(1) Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law in respect to: self-incrimination, . . . records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would obtain in an action in court. Agencies may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

(3) A party may conduct cross-examinations required for a full and true disclosure of the facts;

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or oth-

erwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(5) Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents."

Title 75 O.S. §314. Grant, denial or renewal of licences.

(a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning individual proceedings apply.

(b) When a license has made timely and sufficient application for renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

APPENDIX 4

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 63358

ROGER A. HILST,
Plaintiff-Appellant,

vs.

GERALD GRIMES, Insurance Commissioner,
State of Oklahoma,
Defendant-Appellee.

FILED SEP 19 1986

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Roger Hilst, the appellant above-named, hereby appeals to the Supreme Court of the United States from, the final order of the Supreme Court of the State of Oklahoma, denying review, entered in this 15th day of July, 1986.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph (2). The relevant State Statutes sought to be reviewed by appellant are: 75 O.S. § 309, 75 O.S. §310 and 75 O.S. § 314.

Dated September 19, 1986.

Respectfully submitted,

/s/ Paul McBride
Paul McBride, OBA #5847
210 South Fifth Street
Jenks, Oklahoma 74037
(918) 299-6363

IN THE SURPEME COURT OF THE STATE OF OKLAHOMA

No. 63358

ROGER A. HILST,
Plaintiff-Appellant,

vs.

GERALD GRIMES, Insurance Commissioner,
State of Oklahoma
Defendant-Appellee.

FILED SEP 19 1986

CERTIFICATE OF SERVICE

STATE OF OKLAHOMA)ss
)
COUNTY OF TULSA)

I, Paul McBride, depose and say that I am the attorney of record for Roger Hilst, the appellant herein, and that on September 19, 1986, pursuant to Rule 28, Rules of the Supreme Court of the United States, I served three copies of the Notice of Appeal on each of the parties required to be served herein, as follows:

On Gerald Grimes, Insurance Commissioner, the appellee herein, by mailing the copies in a duly addressed envelope, with first class postage prepaid, to Bert E. Marshall, counsel of record for said Gerald Grimes at his office at Room 423, Will Rogers Building, Capitol Complex, Oklahoma City, Oklahoma 73105.

On Oklahoma Supreme Court, the Presiding Judge herein, by mailing the copies in a duly addressed envelope,

with first class postage prepaid, to James W. Patterson, Clerk of the Appellate Court for said Oklahoma Supreme Court at his office at State Capitol Building, Oklahoma City, Oklahoma 74105.

On Judge Tony Graham, Judge of the District Court of Tulsa County, Oklahoma, the trial Judge herein, by mailing the copies in a duly addressed envelope, with first class postage prepaid, to Tony M. Graham, Judge of the District Court of record for said Tulsa County of Oklahoma at his office at the Tulsa County Courthouse, Tulsa, Oklahoma 74103.

All parties required to be served have been served.

/s/ PAUL MCBRIDE
Paul McBride, OBA #5847
210 South Fifth Street
Jenks, Oklahoma 74037
(918) 299-6363

Subscribed and sworn to before me on September 19, 1986.

/s/ KATHY A. PHILLIPS
Notary Public

My Commission Expires:
July 27, 1988

APPENDIX 5

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY STATE OF OKLAHOMA

No. CJ-84-569

ROGER A. HILST,

Plaintiff,

v.

GERALD GRIMES, Insurance Commissioner, State of Oklahoma,

Defendant.

AMENDMENT TO PETITION

COMES NOW the plaintiff and restates and readopts all of the allegations previously made herein and further adds as follows:

V.

That a transcript of the testimony of the Administrative Hearing held in the above matter by the insurance commissioner was not furnished to the plaintiff until the 23rd day of February, 1984. That although this had been promised at an earlier date, it was impossible for the attorneys representing the plaintiff to receive this information before the time came to file the Petition in this case. That the insurance commissioner refused to give an extension of time in which to file this Petition or to further respond. That as the result of the information received, the plaintiff further shows the court that the insurance commissioner of the State of Oklahoma has improperly denied and re-

voked his insurance license for the following additional reasons:

1. The insurance commissioner did not follow the Administrative Procedures Act of the State of Oklahoma in that a clear concise statement of the charges filed against Mr. Hilst were not given to him at a time prior to the commencement of the hearing sufficient to allow him to prepare to defend himself against them, in violation of his due process rights as provided by the Constitution of the State of Oklahoma and the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

2. That the documents given to him earlier state allegations that were false as to charges five, six, seven, eight, nine and ten. That at the commencement of the hearing through its counsel, the state insurance commissioner, defendant herein, abandoned and changed the essence of charges five, six, seven and eight by orally deleting, after the hearing had commenced, the words "policyholder" in each of those charges. That by doing so they materially and substantially changed the nature of the charge being filed against the plaintiff from one where he is accused of misappropriating monies of a policyholder of an insurance company to one where there is an internal dispute as to who owed who what on various commissions that may have been paid. That Mr. Hilst, the plaintiff, was prepared to show that he had never misappropriated any money of any policyholder but without notice was not prepared or able to show to the preconceived mind of the hearing examiner the distinction between how salesmen are paid commissions or how these commissions are divided as approved and the misappropriation of money of a policyholder.

3. As the hearing commenced, neither the hearing examiner nor the lawyers for the State of Oklahoma's insurance commissioner, advised Mr. Hilst that he would have a right to a continuance in order to review these

substantially changed charges so that he would have the opportunity to properly defend himself on them.

4. That the hearing examiner in this case allowed this hearing to take place without making a ruling on whether or not the nature of the charges against Mr. Hilst would be changed. That in doing so the state insurance commissioner was allowed to, in effect, "try" Mr. Hilst on whatever they wanted to and then amend their complaint to conform with the proof at a later time, which is completely, wholly and entirely contrary to the spirit, rules, regulations and fair practice of the administrative law procedures of the State of Oklahoma and the Constitution of the United States and the State of Oklahoma.

5. That the plaintiff in this case was never apprised by the State Insurance Commissioner or the State Insurance Commissioner's hearing officer of his rights as to counsel, as to continuances, as to notice or any other rights which would have given him an opportunity to properly appear and defendant these changed charges.

6. That the State Insurance Commissioner, its attorneys and its hearing examiner, did not advise Mr. Hilst of the State Insurance Commissioner's policy of long standing to decline to look into, assume jurisdiction of, or concern itself with the payments of insurance commissioners between insurance companies, between insurance agents themselves or the companies that they may represent. That these same parties failed to apprise Mr. Hilst that they had no jurisdiction to look into the inner workings of the insurance commission set up, as the same is not an appropriate part of protecting the "public", which is the sole responsibility and justification for the existence and authorization of the insurance commissioner and his office. That the laws of the State of Oklahoma, 36 O.S. § 1ff provides that the insurance commissioner has no duties except those expressly listed and that by these laws the internal workings of insurance companies and the manner

or timeliness of the payment of the commissioners to agents are not included. Any actions taken by the insurance commissioner on any of the items listed five through ten of the finding of fact are all matters out of the jurisdiction of the insurance commissioner to inquire into and are beyond his statutory authority.

7. That the insurance commissioner has acted arbitrarily and capriciously in suspending Mr. Hilst's license before a hearing. That the insurance commissioner had no information of any sort in its file that shows that any monies of a policyholder had ever been misappropriated by Mr. Hilst. Nonetheless the insurance commissioner's office "made a typographical error" which accuses Mr. Hilst of having taken and misappropriated monies of a policyholder, which in turn gave them the jurisdiction to act immediately without a hearing and to suspend his license. That the the interim suspension of his license was based on what the attorneys for the insurance commissioner called at the time of trial a typographical error, and for which they abandoned earlier notices and amended their charge after the starting of the hearing. So under these circumstances, Roger A. Hilst should be reinstated by order of Court until such time as a hearing concerning the Administrative Law Procedures Act is properly held.

8. Further, the order and the proposed findings of fact and conclusions of law do not meet with the requirements of 75 O.S. § 312 in that findings of fact one, two, three and four are conclusions and not concise and explicit statements of the underlying facts supporting the findings. That findings of fact five and six are also conclusions and not accompanied by a concise and explicit statement of the underlying facts supporting the findings.

That the conclusions of law given are not separately stated to show which findings of fact are violated but are merely a broad catch-all summary of some of the powers of the insurance commissioner.

WHEREFORE, premises considered, the actions of the insurance commissioner, its hearing examiner, and its attorneys and agents are such that they are brought with such irregularity that a trial de novo should be held and that the court should either hold this trial or order the insurance commissioner to hold such trial at which proper evidence could be presented. That in the alternative, the trial court find and determine that the matters complained of are out of the jurisdiction of the insurance commissioner and do not constitute violations and that the insurance license of Roger Hilst should be reinstated instanter, pending hearing, and further that upon hearing, the license should be reinstated permanently.

Respectfully submitted,

McBride & Miller

/s/ Paul McBride
Paul McBride
210 South 5th Street
Jenks, OK 74037
(918) 299-6363

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of March, 1984, I mailed and or delivered a true and correct copy of the above entitled instrument to: Bert E. Marshall, Room 423, Will Rogers Building, Capitol Complex, Oklahoma City, Oklahoma 73105; with sufficient postage thereon fully prepaid.

/s/ Paul McBride

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY STATE OF OKLAHOMA

No. CJ-84-569

ROGER A. HILST,

Plaintiff,

v.

GERALD GRIMES, Insurance Commissioner, State of Oklahoma,

Defendant.

FILED
MAR 29 1984

INTERROGATORIES AND REQUEST FOR ADMISSIONS

TO: Gerald Grimes, Insurance Commissioner of State of Oklahoma.

Under authority of Title 12, O.S. § 3210, you are hereby requested and required to make full, fair and complete answers in writing and under oath, to the following questions, within thirty (30) days from receipt hereof.

NOTE: These interrogatories and requests for admissions are intended to ascertain information in your possession, or that of your agents and employees, including attorneys, or investigators, and that contained in records and documents in your, or their, custody or control or available to you or them.

These interrogatories and requests for admissions shall be considered continuing and should answer to the same change before the trial of this action, you are requested to furnish such different answers, in writing, and under

oath, or it will be assumed that the answers originally given continue as your answers to said interrogatories and request for admissions.

INTERROGATORY NO. 1: Does the Insurance Commissioner of the State of Oklahoma have a policy that prohibits him and his employees from entering into or investigating disputes between an insurance company and its agents concerning their contractual relationships and/or agent's commissions?

INTERROGATORY NO. 2: If the answer to Interrogatory No. 1 is yes, please state the time and place on which this policy was made.

INTERROGATORY NO. 3: If the answer to Interrogatory No. 1 is yes, please state the person, parties or statutes that back or create such policy.

INTERROGATORY NO. 4: Has the Insurance Commissioner, his office, his agents or employees ever investigated a contractual dispute between an insurance company and its agents, or between insurance agents as to matters relating to their commissions?

INTERROGATORY NO. 5: If the answer to Interrogatory No. 4 is yes, please list every incident in the last five (5) years where such an investigation was conducted.

INTERROGATORY NO. 6: If the answer to Interrogatory No. 4 is no, list any request for such investigations that have been denied in the last five (5) years.

REQUEST NO. 1: You are requested to admit that the office of the insurance commissioner never becomes involved in agent-company contractual disputes or in any cases involving agent's commissions.

Respectfully submitted,

McBride & Miller

/s/ PAUL MCBRIDE
Paul McBride
210 South 5th Street
Jenks, OK 74037
(918) 299-6363

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 1984, I mailed and or delivered a true and correct copy of the above entitled instrument to: Bert E. Marshall, Room 423, Will Rogers Building, Capital Complex, Oklahoma City, Oklahoma 73105; with sufficient postage thereon fully prepaid.

/s/ PAUL MCBRIDE

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY STATE OF OKLAHOMA

Case No. CJ 84-569

ROGER A. HILST,

Plaintiff,

vs.

GERALD GRIMES, Insurance Commissioner, State of Oklahoma,

Defendant.

APR 2 1984

PROTECTIVE ORDER

NOW on this 30th day of March, 1984, a hearing was held upon Defendant's motion for a protective order. Having heard the arguments of counsel, being advised in the premises, and for good cause shown, the motion is granted.

IT IS THEREFORE ORDERED pursuant to 12 O.S. Supp. 1983, § 3203(c) that discovery in the above captioned case not be had in order to protect the Defendant from annoyance, undue burden and expense of discovery because this cause of action is a judicial review of an administrative hearing and as such is limited to a review of the record.

/s/ TONY M. GRAHAM
TONY M. GRAHAM
DISTRICT JUDGE

CERTIFICATE OF MAILING

I, Bert E. Marshall, hereby certify that a true and correct copy of the attached Protective Order was mailed with

postage prepaid with return receipt requested on this 30th day of March, 1984, to Mr. Paul McBride, Attorney for Plaintiff, 210 South 5th Street, Jenks, Oklahoma, 74037.

BY BERT E. MARSHALL
BERT E. MARSHALL
Assistant General Counsel

APPENDIX 6

Deposition of Jerry Devon Johnson Taken on February 24, 1984

* * * *

Q. (BY MR. MCBRIDE) All right, sir. Had Mr. Hilst at that time asked you not to come in his office?

A. I had been in his office before since that time.

Q. All right, sir. Had he taken your—Did you once have a key so you could come and go in his office as you pleased?

A. Yes, I did.

Q. All right, sir. And had he withdrawn permission for you to come and go in his office as you pleased?

A. That is correct.

Q. And that was before you came in and got this file?

A. That is correct.

Q. And at the time that he withdrew permission for you to come in and out of his office as you pleased, did he ask you to return your key to the office?

A. And I did so.

Q. All right, sir. And it was your understanding, then, that you were not to come into his office without his permission?

A. I suppose that's fair.

Q. Okay. Now, this file that you have that you—did you take it yourself or did you send someone else to get it?

A. There were two or three people that went to pick the files up.

Q. All right. And who were those people?

A. I believe they were—Mary Colbert and Brad Causey and myself, I believe, are the only three there were.

Q. And what time of the day or night did you go to the office to get these files?

A. During office hours.

Q. And was the office locked?

A. It was.

Q. Wasn't it, in fact, during lunch hour when you were there?

A. I don't remember.

Q. Do you have any recollection at all as to the time of day that you went by his office?

A. It seems to me it was in the afternoon.

Q. All right, sir. Would it be near to lunch or near to closing time?

A. I really don't remember.

Q. Did Mary—What did you say, Colby?

A. Colbert.

Q. Colbert? Could you spell her name for the reporter, please?

A. C-O-L-B-E-R-T, I believe.

Q. Did Mary Colbert have a key?

A. I don't know. I believe she turned her key in, but that's speculation.

MR. CONLEY: Mr. McBride, let me stop right here and ask you: How is all this relevant to your cause in the Tulsa County District Court that this subpoena is issued by? We're likely to leave on account of this.

MR. MCBRIDE: Again, I don't want to just not answer your question here, but the problem that we have in the case up here and at the time was, he was not notified by the state insurance commissioner that they were making any complaints about representatives of the company. He was notified that certain—that he had taken money of policyholders and had misappropriated these monies.

Now he went to Oklahoma City to have this hearing under the impression that if he could prove that these people weren't policyholders up there, that he hadn't done anything wrong, as this would be the internal matters of an insurance company. And when he got to Oklahoma City, the complaint was amended at the start of it to show it was internal work.

And I think that we need documentation to show that these files were out of his hands and it would be physically impossible for him to answer the questions that had been asked him back before, or to answer the letters of the insurance commissioner. And that's the reason that we're inquiring into this matter.

MR. CONLEY: All right.

Q. (BY MR. MCBRIDE) Did Mary Colbert have a key?

A. The key was borrowed from somebody who was still working there, and Mary Colbert was not working there. I don't believe Mary Colbert had a key.

Q. All right. Was there a meeting that you had with Mr. Hilst when he called in several people that had been working with him and asked them to turn in their keys?

A. Right.

Q. And said that you couldn't use his office any more?

A. Right. And I believe that that was done at that time.

Q. All right. And was Mary Colbert one of the people that—

A. She was.

Q. —that he asked to leave at that time and to turn in her key?

A. That's correct.

Q. All right. Was Brad Colby one of those people?

A. Causey.

Q. I'm sorry.

A. And he was.

Q. We better help the reporter her again. Do you know how to spell that?

A. I believe it's C-A-U-S-E-Y.

MR. CONLEY: Let me clarify, Paul, if I can. Do I understand, Jay, your testimony to be that you do have these files? You did get these files?

THE WITNESS: I did have these files.

MR CONLEY: I'm going to advise him not to answer any questions on how these files were obtained. I don't see that it's relevant. He's already admitted that he had the files, and we know that Mr. Hilst didn't.

* * * * *

APPENDIX 7

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF OKLAHOMA

Case No. 83-158

THE STATE OF OKLAHOMA, ex rel GERALD GRIMES, Insurance Commissioner,

Petitioner,

vs.

ROGER A. HILST, a licensed resident insurance agent in the State of Oklahoma,

Respondent.

NOTICE AND ORDER TO SHOW CAUSE

COMES NOW the State of Oklahoma, ex rel Gerald Grimes, Insurance Commissioner, by and through his attorney, Bert E. Marshall, and alleges and states as follows, to-wit:

1. That Gerald Grimes is the Insurance Commissioner of the State of Oklahoma and as such is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code, OKLA.STAT.tit.36, §§101-6306(1981).

2. That the Insurance Commissioner, pursuant to OKLA.STAT.tit.36, §307(A)(1981) has appointed Everett E. Sloop for the purposes of acting as Hearing Examiner with all the implied and expressed powers delegated therefore.

3. That the Insurance Commissioner, pursuant to OKLA.STAT.tit.36, §318(D)(1981), upon written request

seasonably made by a person affected by the hearing and at such person's expense shall cause a full stenographic record of the proceedings to be made by a competent court reporter.

4. That Respondent, Roger A. Hilst, is a licensed resident insurance agent, License Number 013668.

5. That on or about March 21, 1982, Respondent misappropriated monies in the amount of Three Hundred Seven Dollars and Ninety Nine Cents ($307.99) received from Massachussets Indemnity and Life Insurance Company (hereinafter referred to as MILICO). Said monies were to be paid to Stephen Hickman, a MILICO policyholder.

6. That on or about March 16, 1982, Respondent misappropriated monies in the amount of Three Hundred Four Dollars and Eighty Three Cents ($304.83) received from MILICO. Said monies were to be paid to James E. Foy, a MILICO policyholder.

7. That on or about March 21, 1982, Respondent misappropriated monies in the amount of Nine Hundred Eighty Seven Dollars and Forty One Cents ($987.41) received from MILICO. Said monies were to be paid to James E. Foy, a MILICO policyholder.

8. That on or about April 4, 1982, Respondent misappropriated monies in the amount of Two Hundred Twenty Five Dollars and Ninety One Cents ($225.91) received from MILICO. Said monies were to be paid to Brad Causey, a MILICO policyholder.

9. That on or about April 7, 1982, Respondent forged the signature of Mark Weber to an application of insurance to be placed with MILICO.

10. That on or about April 20, 1982, Respondent forged the signature of Donald James Murphy to an application of insurance to be placed with MILICO.

11. That Respondent's actions as alleged hereinabove constitute violations of OKLA.STAT.tit.36, §1428(A)(1)(c)(e)(i) and (j)(1983 Supp.).

THEREFORE, because Petitioner finds that Respondent's action as alleged hereinabove constitute conduct which endangers the public safety and welfare, it is ordered pursuant to OKLA.STAT.tit.75, §314(c)(1981) that Respondent's licenses to engage in the business of insurance in the State of Oklahoma are hereby suspended instanter and the Respondent is specifically ordered to refrain from those activities set forth in OKLA.STAT.tit.36, §105(1981) pending formal administrative proceedings in this matter.

WHEREFORE, Respondent is hereby given notice of hearing to be held on the 9th day of November, 1983, at 10:00 a.m. Respondent is hereby directed to appear before the Commissioner at said date and time in Room 403, Will Rogers Memorial Office Building, Capitol Complex, Oklahoma City, Oklahoma, 73105, and then and there show cause, if any there be, why his licenses should not be permanently revoked or some lesser administrative sanction imposed. Proceedings will be conducted in accordance with the Oklahoma Insurance Code, OKLA.STAT.tit.36, §§101-6306(1981) and the Oklahoma Administrative Procedures Act, OKLA.STAT.tit.75, §§301-326(1981).

WITNESS My Hand and Official Seal this 14th day of October, 1986.

GERALD GRIMES
INSURANCE COMMISSIONER
STATE OF OKLAHOMA

BY /s/ Bert E. Marshall
BERT E. MARSHALL
Assistant General Counsel
423 Will Rogers Building
Oklahoma City, Oklahoma
(405) 521-2746

CERTIFICATE OF MAILING

I, Philip D. Ryan, hereby certify that a true and correct copy of the foregoing Notice and Order to Show Cause was mailed postage prepaid and return receipt requested on this 17th day of October, 1983, to Roger A. Hilst, 2522 South Florence, Tulsa, Oklahoma, 74135.

BY /s/ Philip D. Ryan
PHILIP D. RYAN
Legal Division